

No. 9/7/86-6 Lab./4434.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Administrator, Municipal Committee, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 107 of 1985

between

SHRI RAM RATTAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S. ADMINISTRATOR,  
MUNICIPAL COMMITTEE, ROHTAK

Shri V.S. Singal, A.R. for the workman.

Shri Ram Singh Joshi, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Rattan Singh and the management of M/s. Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette, notification No. 28496—501, dated 9th July, 1985:—

Whether the termination of services of Shri Ram Rattan Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as an Octroi Moharrar since 25th May, 1976 and all through his work and conduct was above board, but the respondent choose to terminate his services unlawfully with effect from 31st January, 1984 and in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). *Inter alia*, it is alleged that one Shri Raj Singh, who was junior to the petitioner is still in the employment of the respondent and so, the termination of services of the petitioner runs counter to the settled dictum "first come last go".

3. In the reply filed by the respondent, it is alleged that the petitioner was never employed on regular basis, who all through remained employed on daily wages and that since the services of the petitioner were governed by the Punjab Civil Services Rules, provisions of the Industrial Disputes Act, 1947 are not applicable in this case.

4. On the pleadings of the parties, the following issues were settled for decision by me on 19th November, 1985:—

1. Whether the termination of services of Shri Ram Rattan Singh is justified and in order? If not, to what relief is he entitled?

5. The petitioner himself appeared as WW-1 and the respondent examined Shri Ram Singh Joshi its office Superintendent MW-1.

6. Heard.

7. The fact that the petitioner remained employed with the respondent from 25th May, 1976 to 31st January, 1974 is not denied by the respondent, though, the case of the respondent is that the petitioner was daily wage employed in lieu of leave vacancy. Be that it may be so, employment of the petitioner with the respondent is for the last more than eight years, the same was uninterrupted and continuous. The fact that the petitioner was employed on daily wages is no ground to hold that he could be deprived from the benefits provided in the Industrial Disputes Act, 1947. This practice of keeping employees employed on *ad hoc* basis or on daily wages has been deprecated by the Hon'ble Supreme Court of India in a recent authority reported in 1985 Lab. I.C. 1733 H.D. Singh, versus Reserve Bank of India and others. Even if it be believed that the service conditions of the petitioner are governed by the Punjab Civil Services Rules, even then it cannot be held that the petitioner could be deprived from the benefits enshrined under section 25-F of the said Act, because his termination squarely falls within the ambit of the term "retrenchment" as defined in section 2(oo) of the said Act. Admittedly no compliance of the said provisions were made by the respondent on the flimsy ground that he was a daily wage. under these circumstances, termination of services of the petitioner was illegal, and unlawful and as such, the same is set aside. The petitioner raised the demand notice within less than one year of his termination. So, he cannot be deprived from the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 28th April, 1986.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.  
Camp Court, Sonapat.

Endst. No. 107-85/689, dated 8th May, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

No. 9/7/86-6Lab/4436.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of the (i) Transport Commissioner, Haryana, Chandigarh (ii) General Manager, Haryana Roadways, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 125 of 85

between

SHRI RAM PAL, WORKMAN AND THE MANAGEMENT OF (i) TRANSPORT COMMISSIONER,  
HARYANA, CHANDIGARH, (ii) GENERAL MANAGER, HARYANA ROADWAYS, SONEPAT

Present :—

Shri Tejinder Singh, A.R. for the workman.  
Shri N.C. Jaink, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Pal and the management of (i) Transport Commissioner, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Sonapat, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 33148-53, dated 7th August, 1985 :—

Whether the termination of services of Shri Ram Pal is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent for the last five years ago but the respondent choose to terminate his services unlawfully with effect from 16th June, 1984 without any notice, enquiry or charge-sheet and in complete disregard of the provisions of section 25F and G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He has further alleged that on the date of termination his total monthly emoluments were Rs. 648. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, it is admitted that the petitioner was employed as Diesel Pump Attendant on *ad hoc* basis,—vide order, dated 12th September, 1979 but his service record was not blemishless as he mis-appropriated 25 liters of diesel and for this mis-conduct his two-annual increments were stopped with commulative effect. It is further alleged that the petitioner was granted retrenchment compensation at the rate of 15 days salary for each completed year of service in compliance with the provisions of section 25F of the said Act but the petitioner did not accept the same. Again an effort was made to pay him retrenchment compensation and salary in lieu of one month notice in the Court on 8th November, 1985 but again the petitioner regused to accept the same. It is admitted that no charge-sheet was given to the petitioner, nor any enquiry was held into the alleged acts of mis-conduct.

4. On the pleadings of the parties, the following issue was settled for decision by me on 27th December, 1985 :—

(1) Whether the termination of services of Shri Ram Pal is justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Anil Kumar, clerk and the workman appeared as his own witness as WW-1. Another witness examined by the management was MW-2 Tirath Ram, pay clerk, Haryana Roadways, Sonapat.

6. Heard.

7. Undisputedly the case of the parties is that the petitioner was employed as a Diesel Pump Attendant on *ad hoc* basis on 12th September, 1979. It is not in dispute that his services were terminated on 16th June, 1984 without any prior notice or payment of retrenchment compensation as envisaged under section 25-F of the said Act. On behalf of the respondent Shri Jain faintly contended that amount of retrenchment compensation and pay in lieu of notice was offered to the petitioner twice, who refused to accept the same and as such, the respondent has always been ready and willing to comply with the mandatory provisions of section 25F of the said Act. This contention raised by Shri Jain being well aware of provision of section 2(oo) of the said Act, which defines the term "retrenchment". Retrenchment could not have been brought about by the respondent without complying with the mandatory provisions of the said Act. Offer of payment of retrenchment compensation and pay in lieu of notice after about more than one year of termination is of no avail to the respondent, because, such a payment has to coincide with the order of retrenchment. It seems that the respondent roadways went wiser about the provisions of section 25F of the said Act at a later stage when an order was passed for payment of retrenchment compensation and pay in lieu of notice on 15th August, 1985. Copy of the order is Ex. MW-1/3. Another point raised on behalf of the respondent was that since the appointment of the petitioner was on *ad hoc* basis, his services could be terminated at any time without complying with the provisions of section 25F of the said Act. This contention runs counter to the settled legal position that no employee can be retrenched except on the ground specifically provided under section 2(oo) of the said Act. The case of the petitioner does not fall within the excepted categories. So, his termination squarely falls within the ambit of term "retrenchment" and as such, provisions of section 25F of the said Act will come into play with full force. As regards the mis-conduct of the petitioner in mis-appropriating 25 litres of diesel, he has been already punished for the same and the doctrine of "double jeopardy" is offending to the Constitutional provisions. So, there is no escape from the conclusion that the termination of services of the petitioner was "retrenchment" which was brought about without complying with the mandatory provisions of section 25F and as such, the same was void abinitio, illegal and unlawful and so, the same is set aside.

8. Now, the question of back wages survives. Unfortunately there is no date on the demand notice received alongwith the order of reference. The order of reference is dated 7th August, 1985. The date of termination is 16th June, 1984. Some time must have been taken by the respondent to make a reference to the Labour Court. So, the date of demand notice can be conjecturally fixed at the fag end of the year 1984. Delay is not much in raising the same. So, the petitioner cannot be denied the benefits of back wages and as such, he is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated, the 27th April, 1986.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endorsement No. 125-85/691, dated the 8th May, 1986

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

No. 9/7/86-6 Lab./14438.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Co-operative Marketing-cum-Processing Society, Branch Rattia, Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 272 of 1984

between

SHRI MAMAN RAM, WORKMAN AND THE MANAGEMENT OF M/S. CO-OPERATIVE  
MARKETING-CUM-PROCESSING SOCIETY BRANCH RATTIA, HISSAR.

Shri Kuldeep Gcdara, A. R. for the workman.

Shri L. S. Bajia, A. R. for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Maman Ram and the management of M/s Co-operative Marketing-cum-Processing Society Branch Rattia, Hissar, to this court, for adjudication,—*vide* Haryana Government Gazette Notification No. 42246-50, dated the 27th November, 1984:—

Whether the termination of services of Shri Maman Ram is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Peon initially at Anajmandi Fatehabad, from where he was transferred to Rattia but the respondent choose to terminate his services unlawfully without holding any domestic enquiry on 4th June, 1984, though he joined the respondent as a Peon in the year 1967. So, he has challenged the order of termination being *malafide* and unlawful.

3. In the reply filed by the respondent preliminary objections taken are that this Court has no jurisdiction to try the present reference and the respondent Society does not fall within the ambit of term "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and further the applicant is estopped from raising the present dispute by his acts and conducts, in whose favour no cause of action has accrued. On merits, it is alleged that the applicant is habitual drunkard, regarding which, a charge-sheet was issued to him on the basis of a report made by the Branch Manager, Rattia. It is further alleged that the enquiry was held, in which, the petitioner was afforded full opportunity of participation, though the petitioner admitted his guilt and so, the order of termination is legal and lawful.

4. On the pleadings of the parties the following issues were settled for decision on 28th July, 1985:—

1. Whether this Court has no jurisdiction to try this reference ?
2. Whether the applicant is estopped from raising the dispute by his Acts and conducts ?
3. Whether the termination of services of Shri Maman Ram is justified and in order ? If not, to what relief is he entitled ?
5. The petitioner appeared as WW-1 and the respondent examined MW-1 Shri Rajinder Singh its Branch Manager at Fatehabad.
6. Heard.

Issues No. 1 and 2 :—

7. These issues were not pressed on behalf of the respondent, so the same are answered against it.

Issue No. 3 :

8. The learned Authorised Representative of the respondent admitted that no valid domestic enquiry was held against the petitioner, though MW-1 Shri Rajinder Singh stated that as per record the petitioner remained absent from his duties from 16th March, 1983 to 18th March, 1983. He further alleged that on 16th March, 1983 the petitioner was escorting a truck full of wheat bags from Ratia to Fatehabad and on the way he pilfered some wheat and that on 24th March, 1983 he received a complaint in that behalf from the Branch Incharge. Copy of the same is Exhibit M-3, regarding which, notice Exhibit M-5 was given to the petitioner. His reply is Exhibit M-6 and that on 5th April, 1983 the petitioner was placed under suspension.—*vide* order Exhibit M-7 and that on 8th July, 1983 the petitioner submitted a written apology Exhibit W-1.

9. The learned Authorised Representative of the respondent contended that the petitioner was guilty of dereliction in his duties in as much as he pilfered some wheat from the truck he was escorting while the same was from Ratia to Fatehabad and in that behalf the petitioner submitted a written apology and so, there was no necessity of holding any domestic probe into the said alleged mis-conduct of the petitioner. In my opinion, this contention is devoid of any force. The petitioner never admitted his guilt regarding pilfering any wheat. He simply tendered an apology regarding his drinking habits and assured the management to improve himself in future. This alleged admission of the petitioner is no ground to hold that the petitioner admitted his guilt. If the petitioner had pilfered any wheat belonging to the respondent Society, a proper enquiry should have been held and the guilty person exposed. Under these circumstances, the order of termination passed against the petitioner was not legal and lawful, because his termination squarely falls within the ambit of terms "retrenchment" as defined in section 2(00) of the said Act and as such, it was mandatory for the respondent to comply with the binding provisions of section 25F of the said Act before terminating the services of the petitioner. Admittedly no compliance was made by the respondent, so, the order of termination was *abinitio* void and unlawful and as such, the same is set aside. The demand notice was raised by the petitioner within two months of his termination

so, he cannot be denied the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 24th April, 1986.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Hisar.

Endst. No. 272-84/693, dated the 8th May, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Hisar.

No. 9/7/86-6Lab./4440.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Municipal Committee, Gohana.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 252 of 1983

*between*

SHRI SOMI, WORKMAN AND THE MANAGEMENT OF M/S. MUNICIPAL COMMITTEE  
GOHANA

*Present.—*

Shri R.S. Lakra, A.R. for the workman.

Shri S. Kaushal, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Somi and the management of M/s. Municipal Committee, Gohana, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 61724-29 dated 23rd November, 1983 :—

Whether the termination of services of Shri Somi is justified and in order ? If not, to what relief is he entitled ?

22. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Sweeper on 1st June, 1981 but the respondent choose to terminate his services unlawfully on 30th June, 1983 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, pleas taken are that the reference is bad in law, because the petitioner has appointed on daily wages and his services were dispensed with as per the stipulations in the order of appointment. It is denied that the petitioner was employed on 1st June, 1981, though the father of the petitioner retired on 31st December, 1981 from the respondent Committee. It is also alleged that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Another plea taken is that the petitioner remained gainfully employed after his discharge.

4. On the pleadings of the parties, the following issue was settled for decision by me on 18th December, 1984 :—

1. As per terms of reference ?



5. Thereafter in furtherance of the amendment made by the respondent in the reply, the following additional issues were laid down for decision by me on 16th October, 1985 :—

I-A. Whether the reference is bad in law ?

I-B. Whether the workman remained gainfully employed for his alleged termination ?

6. The petitioner appeared as his own witness as WW-1 and the respondent examined MW-1 Shri Balwan Singh Sanitary Inspector.

7. Heard.

#### Issue No. 1 :

8. Though alleged by the petitioner that he was appointed on 1st June, 1981 but it is not denied by the respondent that the petitioner was employed on daily wages on 17th February, 1982,—vide order Exhibit M-1. It was orally argued on behalf of the respondent that since the petitioner's appointment was subject to the availability of the candidate sponsored through the Employment Exchange, so, the respondent was justified in dispensing with the services of the petitioner after the arrival of regular candidate. This plea has not been taken by the respondent even in the amended reply filed in the Court. The plea taken is that services of the petitioner were discharged as per stipulation in the letter of appointment. I have gone through the same. The same is Exhibit M-1. There is no mention in the said letter dated 17th February, 1982 that the petitioner's tenure employment is restricted upto the date regular candidate sponsored through the Employment Exchange is appointed. It is mentioned therein that the petitioner be appointed in lieu of the vacancy caused with the retirement of his father. So, the statement of MW-1 Shri Balwan Singh, Sanitary Inspector, of the respondent runs counter to the plea taken in the reply filed in the Court. It is immaterial that the petitioner was employed on daily wages in a recent authority rendered by the Hon'ble Supreme Court of India reported in 1985 Lab. I. C. 1733 H.D. Singh V/s Reserve Bank of India and others, their Lordships held that the practice of keeping employees on *ad hoc* basis is offensive to the provisions of the Industrial Disputes Act, 1947 and squarely falls within the ambit of term "unfair labour practice" as detailed in section 2(rd) of Schedule 5th. In the authority under reference the petitioner was hand Tikka Mazdoor engaged casually by the respondent Reserve Bank of India for counting coins. He was being paid some wages of Rs. 3/- per day. His employment during the last twelve calendar months from the date of termination was less than 170 days. The Hon'ble Supreme Court *suo-moto* added fifty two Sundays and other gazetted holidays and held that the petitioner is deemed to have actually worked with the respondent for more than 240 days and ordered for his reinstatement with full back wages. Their Lordships also choose to make strong observations against the respondent Reserve Bank of India and others. In the present case, the petitioner is in a far happy position. His tenure of employment was uninterrupted from the date of his appointment which extends for more than one year. Admittedly no prior notice or retrenchment compensation was paid to him before dispensing with his services. So, the alleged discharge of the petitioner from employment squarely falls within the ambit of term "retrenchment" as defined in section 2(cc) of the said Act, which could not have been brought about by the respondent without complying with the mandatory provisions of section 25F of the said Act. Under these circumstances, order of discharge/termination is set aside being unlawful and as such, this issue goes in favour of the petitioner.

#### Additional Issues No. 1-A and 1-B :

9. In the light of my foregoing discussion, the petitioner is ordered to be reinstated with continuity of service. On the question of back wages stiff resistance was offered by the learned Authorised Representative of the respondent Shri Kaushal, who contended that the respondent Committee is in financial doldrums and burdening the same with back wages would be very harsh. There is no denying the fact that all Local Bodies in the State of Haryana are facing acute financial crisis partly because of mis-management and partly because of the fact that the avenues of raising finances are very limited. The petitioner is a young man of about 22 years. It is difficult to believe that he has remained idle for the last about less than three years, the period during which, he remained out of employment with the respondent Committee. So, under these circumstances, I restrict his back wages upto 75%. So, the petitioner is ordered to be reinstated with continuity of service and 75% of back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 1st May, 1986.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.

Endorsement No. 252-83/695, dated 8th May, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.